IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE TWENTY THIRD DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 6052 of 2005

Between:

Syed Ayub Ali, S/o Syed Arshad Ali,
R/o H.No. 19-2-11/61, Misri Gunj, Hyderabad.

..... PETITIONER

AND

1 Ashok Chintawar, S/o Late Dr. Lakshmikanth Rao,
R/o Flat No. 503, South Block, South Pent House,
Collective House, Mayuri Marg, Begumpet, Hyderabad.
2 The Additional Commissioner, Municipal Corporation of
Hyderabad, Secunderabad Division, Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ of Mandamus or any other appropriate writ, order or direction and: (a) By declaring the action of the Respondent No.2 in collecting the consent letters only from the Respondent No.1 and not from the Petitioner (Tenant) as per Section 146 and 147 of the H.M.C. Act as illegal and unconstitutional. (b) To direct the Respondents not to acquire or demolish the Petitioner's property bearing No. 1-11-248/1, situated at Shyamlal Building, Begumpet, Secunderabad, without initiating Land Acquisition Proceedings and without obtaining the consent of the Petitioner without issuing prior notice.

Counsel for the Petitioner:MR.WASIM AHMED KHAN

Counsel for the Respondent No.1 : None appeared

Counsel for the Respondent No.2: SMT.G.JYOTHI KIRAN

The Court at the stage of admission made the following :

ORDER:

Heard the learned counsel for the petitioner and the learned standing counsel appearing for second respondent.

The petitioner seeks a Writ of Mandamus to declare the action of the second respondent in trying to interfere with his possession and enjoyment and to demolish the premises bearing No.1-11-248/1, situated at Shyamlal Building,Begumpet, Secunderabad, without following due process of law for the purpose of proposed road widening work, as arbitrary and illegal.

It is represented by the learned counsel appearing for both parties that the issue involved in this writ petition is squarely covered by a decision of this Court in W.P. No. 21198 of 1997 and batch, dated 03-02-1998, wherein the Division Bench while considering an identical question, issued guidelines as under:

> *"1. Where a property is required for public purpose viz., widening of roads or for any other purpose, the authorities straightaway cannot take law into their hands and jump into the premises, dispossess or evict the occupants or demolish the property.*

2. *If the authorities concerned want to take action for eviction/dispossession of the occupants or demolition, they shall issue 60 days' prior notice notifying as to the nature of the property, the property to whom it belongs and the proposed action calling for explanation/objections if any from the occupants. On receipt of such objections, if there is any objection as to the ownership of the property, the authorities should determine the extent of encroachment of unauthorized occupation and also determine whether the property in question belongs to Government/any other local self Government or authority or the occupants and pass appropriate orders within three months from the date of receipt of the objections, after affording an opportunity of being heard to the occupants.*

3. *In case where demolition of private property has already been made, the authorities shall determine the damages on the basis of the assessment to be made by the Engineer of the Roads and Buildings Department and disburse the amount of damages quantified forthwith.*

4. *If the demolition is in respect of local bodies' Government property, the*

question of damages does not arise. In such an event, the occupant shall be entitled to remove the material used for the construction.

5. *In case of demolition of private property, the authorities concerned shall determine the loss caused to the occupants on the basis of the assessment to be made by the Engineer of R & B Department and on such assessment of damages, the concerned authorities shall take appropriate steps to disburse the amount quantified forthwith.*

6. *If there is any claim for grant/assessment of the property, the concerned authorities shall consider the same in accordance with law taking into consideration the eligibility and the entitlement of occupants, after making enquiry and till such claim is decided, there shall be status-quo obtaining as on today regarding the structures."*

The learned Standing counsel appearing for the respondent-Municipality does not dispute the above legal position.

The writ petition is accordingly disposed of directing the 2nd respondent not to interfere with the possession of the petitioner and not to demolish the premises bearing No.1-11-248/1 situated at Shyamlal building Begumpet, Secunderabad without following the guidelines issued by the Division Bench in common order dated 03-02-1998 in W.P. No. 21198 of 1997 and batch. No costs.

_____

(**G. ROHINI, J**)

Date: 23-03-2005

sh

To

1 The Additional Commissioner, Municipal Corporation of Hyderabad, Secunderabad Division, Secunderabad.

2 Two CD copies.